



## STATEMENT OF THE CASE

Appellant-Defendant, Michael Ward (Ward), appeals his conviction for two Counts of sexual misconduct with a minor, as Class C felonies, Ind. Code § 35-45-4-9(a).

We affirm.

## ISSUE

Ward raises one issue on appeal, which we restate as: Whether the trial court appropriately sentenced him in light of the nature of the offense and his character.

## FACTS AND PROCEDURAL HISTORY

Forty-year-old Ward is married to N.W., who has a fourteen-year-old daughter, C.B., from a previous relationship. On February 8, 2007, the State filed an Information charging Ward with Counts I-III, sexual misconduct with a minor, as Class C felonies, I.C. § 35-42-4-9(a). On June 21, 2007, Ward entered into a plea agreement with the State, agreeing to plead guilty to Counts I-II, sexual misconduct with a minor, in exchange for the State dismissing the third Count and with sentencing left to the discretion of the trial court. On September 27, 2007, the trial court conducted a sentencing hearing. During the hearing, the trial court identified one aggravator, a 1995 conviction for two Counts of child molestation. Additionally, the trial court recognized three mitigators: (1) his guilty plea, (2) his military service, and (3) the State's dismissal of Count III. In light of these factors, the trial court sentenced Ward to eight years on Count I, and eight years on Count II with four years suspended. The trial court imposed both sentences consecutively.

Ward now appeals. Additional facts will be provided as necessary.

## DISCUSSION AND DECISION

Ward argues that the trial court inappropriately sentenced him. Indiana Appellate Rule 7(B) permits us to revise a sentence if, after due consideration of the trial court's decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender. *See* Ind. Appellate Rule 7(B): *see also Childress v. State*, 848 N.E.2d 1073, 1079 (Ind. 2006). The burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. *Childress*, 848 N.E.2d at 1080. Ward failed to carry this burden.

In the present case, Ward was convicted of two Counts of sexual misconduct with a minor, as Class C felonies, which carry an advisory sentence of four years, a minimum sentence of two years and a maximum sentence of eight years. I.C. § 35-50-2-6. At the sentencing hearing, the trial court imposed the maximum sentence on each Count.

Upon review, we find the current sentence to be in line of with the nature of the offense and Ward's character. With regard to the nature of the offense, we note that Ward committed both Counts of sexual misconduct within one calendar year. Additionally, as the victim's stepfather, he was clearly in a position of trust with C.B. By committing the instant offenses, he betrayed that trust, not just once, but twice. Furthermore, he admitted to sexually molesting C.B. because he was "depressed" and "bored." (Appellant's App. Vol II, p. 10).

With regard to Ward's character, we focus on his 1995 conviction for two Counts of child molestation. The facts of this conviction indicate that Ward sexually molested his

previous wife's daughter from an earlier marriage. He was sentenced to twenty years with fifteen years executed. Accordingly, he was on probation for the 1995 conviction when he committed the instant acts. Moreover, Ward has a substance abuse problem, which he denies exists. Nevertheless, he admitted to using Antabuse and attending AA meetings. In addition, he has used acid, hashish, marijuana and cocaine experimentally.

In light of the evidence before us, we conclude that Ward's sentence is not in appropriate in light of his character and the nature of the offense.

### CONCLUSION

Based on the foregoing, we conclude that the trial court did not inappropriately sentence Ward.

Affirmed.

KIRSCH, J., and MAY, J., concur.